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STOEL RIVES LLP
201 SOUTH MAIN STREET
ONE UTAH CENTER
SALT LAKE CITY, UT 84111

EXAMINER

TARAZANO, DONALD LAWRENCE

ART UNIT PAPER NUMBER

1773

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/607,750

Applicant(s)

WOLAK, PAUL Z.

Examiner

D. Lawrence Tarazano

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1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17-21 is/are allowed.
- 6) ☐ Claim(s) 1,2 and 7-15 is/are rejected.
- 7) ☐ Claim(s) 3-6 and 16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date Jan 9, 04, Dec 03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

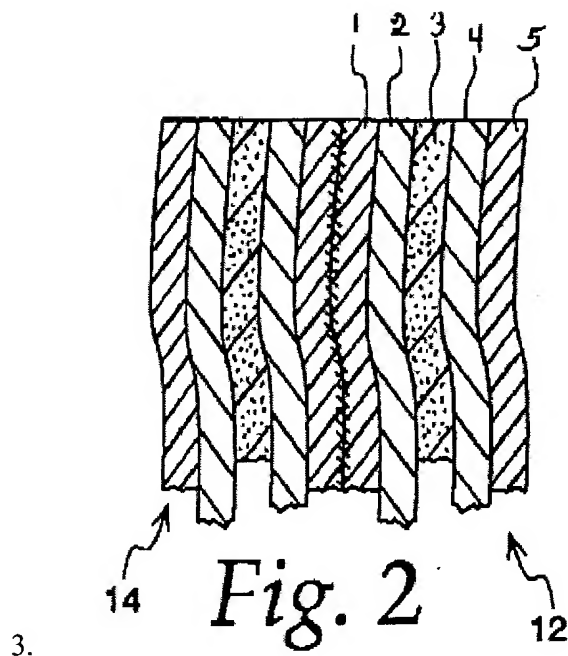
(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 7-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Gerrits et al (6,475,578) with additional evidence provided by Mackay (2001/0042938) to show that Exxon 3131 is an EXACT™ resin (i.e. resin made by metallocene catalysis).

Gerrits et al. teach peelable films comprising a barrier layer (5) made of HDPE, a peelable layer (2) made from a blend of polybutylene and HDPE, and the seal layer (1) is made from a blend of EVA, Plastomer, and Polybutylene. The plastomers used in the examples is Exxon 3131 is a metallocene-catalyzed polyethylene as evidence by Mackay. The amount of polybutylene used in the peelable layer is 20 to 80%, wherein 20% is an endpoint value within the claimed range (Claims 13 and 14) (see column 3, lines 35+). Even though the structure is used to form fin seals, the examiner believes that the structure has the capability (as required by the film claims), to be used to form lap seals. Given the make up of the layers, layer 5 would be sealable to layer 1 as claimed. The barrier properties would flow from the material used and would give the films the claimed properties. As a general not, the examiner believes that the term HDPE, would

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necessarily include materials having a density of at least 0.940 g/cc. HDPE materials are resins having a density above 0.94 g/cc.



Claim Rejections - 35 USC § 103

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9 and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerrits et al. (6,475,578).

6. Gerrits et al. teach films having a peelable layer comprising 20-80% polybutylene. The subject matter as a whole would have been obvious to one having ordinary skill in the art at the

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time the invention was made, since it has been held that choosing the overlapping portion, of the range taught in the prior art and the range claimed by the applicant, has been held to be a *prima facie* case of obviousness, see *In re Malagari*, 182 USPQ 549.

7. Regarding the density of the HDPE, it would have been obvious to one having ordinary skill in the art to have used materials having a density of greater than 0.940 g/cc since such materials are HDPE and fall within the industry accepted definition of such materials. Also see the applicants' definition [033].

Allowable Subject Matter

8. Claims 17-21 are allowed. The closest prior art 6,475,578 teaches peelable films used for bag forming processes, but a fin seal is used and there is no obvious reason to make the jump to a lap seal. The sealable layer is sealed to another sealable layer; they do not seal the film to the back of itself as claimed in the instant bag forms. The examiner feels that the prior art film structure is met, but the applicants' bag is novel in the way the seals are made. Additional references are cited on the PTO-892.

9. Claims 3-6 and 17 are objected to as depending from rejected claims. The prior art fails to suggest the claimed polymers.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Lawrence Tarazano whose telephone number is (571)-272-1515. The examiner can normally be reached on 8:30 to 6:00 (off every other Friday).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul J Thibodeau can be reached on (571)-272-1516. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D. Lawrence Tarazano
Primary Examiner
Art Unit 1773



dlt